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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/932,227	09/17/1997	ERIC T. FOSSEL	S1509.70029US00	5092

23628 7590 04/26/2010  
WOLF GREENFIELD & SACKS, P.C.  
600 ATLANTIC AVENUE  
BOSTON, MA 02210-2206

EXAMINER
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MULLIS, JEFFREY C

ART UNIT	PAPER NUMBER
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1796

MAIL DATE	DELIVERY MODE
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04/26/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



Art Unit: 1796

Applicants (10 page) substitute specification of 8-6-09 has been entered. Applicants substitute specification and the translation of WO 95/15147 have been separated.

WO 95/151147 was previously considered.

The NPL on applicants IDS of 1-22-2010 has not been considered since has not been considered and furthermore applicants "BioSpace" article has not been cited with the author and place of publication , MPEP 609 and it is not clear what the title is since the left quotation on applicants IDS is unmatched nor is it clear what "NDA to be filed" refers to.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

Art Unit: 1796

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 33-35, 38 42-44, 50, 62, 63, 70 and 72-77 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 7,629,384. Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of the claims overlaps.

The above new grounds of rejection was made relying on a reference cited on an IDS after payment of a 1.17(p) fee and is therefore made FINAL, MPEP 609.

Any inquiry concerning this communication should be directed to Jeffrey C. Mullis  
M-F, 9-5pm at telephone number 571 272 1075.

Jeffrey C. Mullis  
Primary Examiner  
Art Unit 1796

JCM

4-21-10

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/Jeffrey C. Mullis/

Primary Examiner, Art Unit 1796